

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

CHRISTOPHER LEE NEAL,

Petitioner,

v.

CIVIL CASE NO. 1:06CV69

JOYCE FRANCIS,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION

Before the Court is United States Magistrate Judge James E. Seibert's Report and Recommendation ("R&R"). For the reasons set forth below, the Court **ADOPTS** the R&R, **CONSTRUES** Neal's motion as a Writ of Error Coram Nobis under 28 U.S.C. § 1651 (the "All Writs Act"), and **TRANSFERS** the case to the United States District Court for the Middle District of North Carolina.

I. Background

On October 25, 1995, the petitioner, Christopher Lee Neal ("Neal") was sentenced to a total of 360 months of imprisonment following his conviction in the United States District Court for the Middle District of North Carolina for conspiring to distribute cocaine base, distributing cocaine base, employing a minor to distribute cocaine base, and carrying and using firearms during a drug trafficking crime.

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Neal appealed his conviction to the Fourth Circuit Court of Appeals, arguing that there was insufficient evidence to convict him on three of the counts, that various testimony against him should have been excluded, and that the district court erred in calculating his base offense level. The Fourth Circuit rejected his arguments, and the United States Supreme Court declined certiorari. U.S. v. Cargill, 17 Fed. Appx. 214, 236-238 (4th 2001), cert. denied, 534 U.S. 1171 (2002).

Subsequently, Neal began a long series of collateral attacks on his conviction. On February 6, 2003, and February 18, 2003, the United States District Court for the Middle District of North Carolina dismissed without prejudice two motions by Neal brought pursuant to 28 U.S.C. § 2255 for failure to file on the correct forms. On March 18, 2003, the same court denied Neal's motion to dismiss his indictment on the ground of prosecutorial misconduct, and the following day denied another of Neal's § 2255 motions.

Thereafter, on June 27, 2003, Neal moved for a sentence reduction, which was denied by the district court, as was Neal's December 3, 2003 motion for mistrial. Likewise, Neal's

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February 6, 2004 motion to dismiss the indictment was denied, as was his May 19, 2004 motion for sentence modification.

Between August 25, 2004 and May 15, 2006, Neal filed seven additional § 2255 motions, six of which were denied or dismissed, several because Neal failed to obtain Fourth Circuit authorization to file successive applications pursuant to § 2255, an authorization which the Fourth Circuit had denied on February 6, 2006.

Pursuant to 28 U.S.C. § 2241, Neal filed his petition for writ of habeas corpus with this Court on May 9, 2006. On September 18, 2006, Magistrate Judge Seibert entered an R&R recommending that this Court dismiss the petition. This Court adopted that R&R and dismissed the petition on May 3, 2007.

On January 3, 2008, Neal filed a motion for relief from judgment pursuant to Fed. R. Civ. P. 60(b). On January 16, 2008, the Court reopened the case and referred the motion to Magistrate Judge Seibert.

On April 24, 2008, Neal filed a motion for default judgment. On the next day, April 25, 2008, he filed a motion for bond pending disposition of his petition. On May 2, 2008,

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the defendants moved to transfer the case. All of these motions are still pending.

On June 11, 2008, Magistrate Judge Seibert entered an R&R recommending that this Court construe Neal's motion for relief from judgment as a petition under the All Writs Act for a Writ of Error Coram Nobis, and transfer the case to the United States District Court for the Middle District of North Carolina. On June 27, 2008, Neal filed objections to the R&R.

II. Standard of Review

The Court reviews de novo any portions of the Magistrate Judge's R&R to which a specific objection is made, Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983), and may adopt, without explanation, any of the recommendations to which the prisoner does not object. Id.

III. Analysis

Upon de novo review, the Court finds that the Magistrate Judge properly applied the controlling rule of law from United States v. Mandel, 862 F.2d 1067, 1076-79 (4th Cir. 1988), when he determined that a Writ of Error Coram Nobis is the appropriate remedy in this case and that the proper forum is the Middle District of North Carolina. It is unclear from the record

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whether Neal's petition has merit. By transferring this case to the district of conviction a district court much more familiar with the case will be able to determine the merits of the writ.

A § 2241 petition may not be transferred to the district of conviction because the petition may only be brought in the district of incarceration. See 28 U.S.C. § 1404(a). Consequently, were this Court to merely transfer the case as a § 2241 petition, the receiving court might properly rule that it lacked jurisdiction to consider the petition. This decision would leave Neal without a remedy.

VI. Conclusion

Consequently, in the interest of justice, the Court **ADOPTS** the Report and Recommendation (Dkt. No. 50), **CONSTRUES** Neal's motion as a Writ of Error Coram Nobis under 28 U.S.C. § 1651, **GRANTS** the motion to transfer the case (dkt. no. 45), **DENIES** the motion for default judgment **AS MOOT** (dkt. no. 42), and **TRANSFERS** the case to the United States District Court for the Middle District of North Carolina. The Court leaves other pending motions for disposition by the transferee court.

It is so **ORDERED**.

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The Clerk is directed to transmit copies of this Order to counsel of record and all appropriate agencies, and to mail a copy of this Order to the petitioner by certified mail, return receipt requested.

Dated: July 3, 2008.

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE